

WEDNESDAY, JUNE 19, 2002

The Board met at its offices at 450 N Street, Sacramento, at 9:40 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, Mr. Andal and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

**BUSINESS TAXES APPEALS HEARINGS****Eid and Seven Sisters Inc., 114220**

1-1-98 to 9-30-00, \$117,057 Tax

For Petitioner: Norman Coates, Representative

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the evidence supports lowering the audited understatement of taxable sales because petitioner believed the total understatement found by the Department, and agreed to by petitioner, was approximately \$11,000.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Ahmed Ben Hassan, 30423**

7-1-94 to 3-31-97, \$27,381.76 Claim for Refund

For Claimant: Josephine D. Bautista, Bookkeeper  
Ahmed Hassan

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the evidence warrants using an inventory turnover ratio for purchases of cigarettes.

Whether the evidence warrants deleting the audited understatement of gasoline sales and accepting gasoline sales as reported.

Whether audited beer sales are overstated because the High Street store was closed for four months in 1996.

Whether the audited beer markup established in the audit is excessive.

Whether relief from the 10 percent penalty for negligence is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Ms. Mandel voting no, the Board ordered that the negligence penalty be deleted and the disputed measure of tax be reduced by 25 percent.

WEDNESDAY, JUNE 19, 2002

**LA Washington Golf Center, Inc., 89002144620**

7-1-93 to 6-30-96, \$36,003.64 Tax

\$00.00 Penalty, Negligence

For Petitioner: Alvin Pittman, Attorney

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether disallowed sales for resale, sales to foreign consulates, and interstate commerce sales by petitioner were valid, and the audit sampling method was adequate.

Whether relief from the interest is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Ann Minshew, 63291**

1-1-97 to 12-31-99, \$67,422.13 Tax

\$6,742.23 Penalty, Negligence

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether petitioner has presented sufficient proof that the liquor pour size should be increased.

Whether petitioner has provided sufficient evidence to establish a larger amount for self-consumption.

Whether relief from the negligence penalty is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

**FINAL ACTION ON PETITIONS HEARD JUNE 19, 2002**

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Eid and Seven Sisters Inc., 114220*, be redetermined as recommended by the Appeals Section and directed staff to offer petitioner a two-year payment plan.

Mr. Andal moved that the petition of *LA Washington Golf Center, Inc., 89002144620*, be redetermined. The motion was seconded by Mr. Klehs. Mr. Parrish offered a substitute motion to exclude three specific sales, taxpayer's Item Nos. 2, 4 and 7, otherwise redetermine the petition as recommended by the Appeals Section. The motion was seconded by Mr. Andal but failed to carry, Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting no.

WEDNESDAY, JUNE 19, 2002

Upon motion of Mr. Andal, seconded by Mr. Klehs and duly carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

The Board recessed at 10:45 a.m. and reconvened at 1:40 p.m. with Mr. Klehs, Mr. Andal and Ms. Mandel present.

## **PUBLIC HEARINGS**

### **Timber Harvest Values**

Charles Knudsen, Chief, County Property Tax Division, stated for the record that Revenue and Taxation Code section 38204(a) requires that the Board shall estimate the immediate harvest value and adopt schedules for each species or subclassification of timber harvested between July 1 and December 31, 2002.

Speakers: Speakers were asked to address the Board, but there were none.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang and Mr. Parrish absent, the Board adopted the Timber Harvest Values with amendments (Exhibit 6.1).

Exhibits to these minutes are incorporated by reference.

### **Proposed Adoption of Sales and Use Tax Regulation 1534, Timber Harvesting Equipment and Machinery**

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record that the adoption of *Regulation 1534, Timber Harvesting Equipment and Machinery*, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code section 6356.6, granting a partial exemption from tax for sales of certain off-road equipment and machinery provided by the statute under defined conditions. (AB 426, Stats. 2001, Ch. 156, § 5.) Ms. Thurston stated for the record that staff propose a non-substantive change to Regulation 1534, inserting the statutory operative date of September 1, 2001.

Speakers: Speakers were asked to address the Board, but there were none.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang and Mr. Parrish absent, the Board adopted *Regulation 1534, Timber Harvesting Equipment and Machinery*, as published and with the addition of the statutory operative date of September 1, 2001 (Exhibit 6.2).

WEDNESDAY, JUNE 19, 2002

**Proposed Adoption of Sales and Use Tax Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries**

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record that the adoption of proposed *Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries*, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code sections 7209 and 7223. The regulation is proposed to provide a method by which a city may submit a reallocation inquiry and appeal an adverse decision to the Board. Ms. Thurston further informed the Board of amendments to the published language which would require the regulation to be placed in the 15-day file.

Speakers: Albin C. Koch, General Counsel, Municipal Resource Consultants

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board adopted the amendment to the published language of *Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries*, and placed the regulation in the 15-day file with staff's amendments (Exhibit 6.3).

**BUSINESS TAXES APPEALS HEARINGS**

Federico and Isabelita Cabungcal, 92436

7-1-97 to 5-15-00, \$18,193.05 Tax

\$1,819.31 Penalty, Negligence

For Petitioner: Federico S. Cabungcal

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the evidence supports that audited taxable sales based on the prior audit were overstated.

Whether relief from the negligence penalty is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel voting no, Mr. Chiang absent, the Board ordered that the negligence penalty be deleted, otherwise redetermined as recommended by the Appeals Section. The Board directed staff to offer petitioner a 2-year payment plan.

Marine Science Institute, 92759

6-1-98, \$105,236.00 Tax

For Petitioner: Jeff Rutherford, President

William Conklin, Chairman, Board of Trustees

For Sales and Use Tax Department: Warren L. Astleford, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

WEDNESDAY, JUNE 19, 2002

Issue: Whether petitioner's purchase and use of the vessel is exempt or excluded from tax.

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and duly carried, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal voting no, Mr. Chiang not participating, the Board ordered that the petition be granted as to the disputed measure of tax.

**Edward Jack Sandel, 89000335440, 89000335460**

4-1-90 to 6-30-90, \$00.00 Tax

7-1-89 to 6-30-92, \$33,032.11 Tax

For Petitioner: Edward Jack Sandel, Taxpayer

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the evidence shows that the audited amounts of cost of goods sold are excessive.

Whether the evidence shows that the audited taxable sales are excessive.

Whether the evidence shows that the audited markup is excessive.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**The Quadri Group, dba Dynatype Graphics, 89000287400**

4-1-93 to 6-30-95, \$00.00 Tax

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Jeffrey H. Graybill, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Future billing for corporate officer liability with two compliance employees of the Sales and Use Tax Department.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

The Board recessed at 2:55 p.m. and reconvened at 2:57 p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish, Mr. Andal and Ms. Mandel present.

### **FINAL ACTION ON PETITION HEARD JUNE 19, 2002**

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the petition of *Edward Jack Sandel, 89000335460 and 89000335440*, be redetermined as recommended by the Appeals Section.

WEDNESDAY, JUNE 19, 2002

The Board adjourned at 3:00 p.m.

*The foregoing minutes are adopted by the Board on August 1, 2002.*